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In re Application of:
Yun-Bok Lee et al.
Serial No.: 09/893,964
Filed: June 29, 2001
Attorney Docket No.: 8733.452.00

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a decision on the petition filed May 17, 2004, via facsimile transmission, to withdraw the holding of abandonment in the above-identified application under 37 CFR § 1.181. No petition fee is required.

The petition is **GRANTED**.

The application was held abandoned for failure to timely file a response to the Final Office action of September 29, 2003. A Notice of Abandonment was mailed on April 28, 2004 to a previous correspondence address and re-mailed to the above-indicated address on May 24, 2004.

Petitioner asserts that the final Office action mailed September 29, 2003, was not received. To support this assertion, petitioner asserts that the final Office action was not received because it was returned undelivered by the US Postal Service, and that a search of the file jacket and docket records indicates that the Office action was not received.

A review of the written record indicates that the final Office action mailed September 29, 2003 was returned undelivered by the U.S. Postal Service on October 3, 2003. The record also indicates that a Notice of Abandonment was issued on April 28, 2004. This Notice was also returned undelivered by the U.S. Postal Service on May 11, 2004. A request for a "Change of Correspondence Address" was filed, via facsimile transmission, on May 17, 2004, and a copy of this request along with an "Auto-Reply Facsimile Transmission" acknowledging receipt of a 3-page transmission on May 17, 2004 by the USPTO was filed on May 19, 2004. The Notice of Abandonment was apparently remailed to the new address but was also returned undelivered by the U.S. Postal Service. There is no evidence of record indicating that the final Office action was remailed.

Pursuant to M.P.E.P. § 707.13, the USPTO should use every reasonable means to ascertain the correct address and forward the action again, after stamping it "remailed" with the date thereof

and redirecting it if there is any reason to believe that the action would reach applicant at such new address. If the Office action was addressed to an attorney, a letter may be written to the inventor or assignee informing him or her of the returned action. The period running against the application begins with the date of remailing. *Ex parte Gourtoff*, 1924 C.D. 153, 329 O.G. 536 (Comm'r Pat. 1924). If the Office is not finally successful in delivering the letter, it is placed, with the envelope, in the file wrapper. For an Image File Wrapper (IFW), a copy of the letter, and a copy of the envelope should be added to the IFW (see IFW Manual). If the period dating from the remailing elapses with no communication from applicant, the application is abandoned.”

The final Office action was returned undelivered by the US Postal Service and was not remailed pursuant to M.P.E.P. § 707.13. The failure to re-mail the final Office action resulted in the petitioner not being duly served notice that a response to the final Office action was required. Accordingly, the application is not abandoned in fact.

For the above stated reason, the petition is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The final Office action of September 29, 2003 will be remailed. The shortened statutory period for response will be reset to run from the date the action is re-mailed. Extensions of time are available under 37 C.F.R. § 1.136(a).

Inquiries regarding this decision should be directed to Hien H. Phan, Special Program Examiner, at (703) 308-0519.

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